

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BRADY W. BARTON,

01-CV-0260E(F)

Plaintiff,

-vs-

COMMISSIONER OF SOCIAL SECURITY,

ORDER

Defendant.

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The Honorable Leslie G. Foschio, a Magistrate Judge in this judicial district, having conducted all proceedings necessary to determine the merits of factual and legal issues presented in this matter pursuant to this Court's referral under 28 U.S.C. §636(b)(1)(B), and having on October 20, 2005 filed his Report and Recommendation concerning such, and no objection thereto having been made, and the substance and rationale of said Report and Recommendation having been considered by this Court, it is hereby

**ORDERED** that said Report and Recommendation is fully confirmed, the defendant's motion for judgment on the pleadings is denied and this matter shall be remanded to the Commissioner of Social Security for further proceedings.

DATED: Buffalo, N.Y.

November 16, 2005

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**/s/ John T. Elfvin**

JOHN T. ELFVIN

S.U.S.D.J.